

82 - 1136

Supreme Court, U.S.  
FILED

DEC 22 1982

ALEXANDER L. STEVAS  
CLERK

No. ....

---

In The  
**Supreme Court of the United States**

---

**OCTOBER TERM, 1982**

---

**CUMIS INSURANCE SOCIETY, INC.,**

*Petitioner*

v.

**GOVERNMENT EMPLOYEES CREDIT UNION, ET AL.,**

*Respondents*

---

**PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT OR, ALTERNATIVELY,  
PETITION FOR WRIT OF MANDAMUS**

**JAMES A. KNOX  
STEPHEN L. BASKIND  
Vial, Hamilton, Koch, Tubb,  
Knox & Stradley  
1500 RepublicBank Tower  
Dallas, Texas 75201  
(214) 748-4541**

and

**JOHN C. WILSON  
Wilson & Grosenheider  
711 West Seventh Street  
Post Office Box 1584  
Austin, Texas 78767**

*Counsel for Petitioner*

**December 20, 1982**

---

**QUESTION PRESENTED**

**WHETHER THE DISTRICT COURT DISREGARDED THE FEDERAL RULES OF CIVIL PROCEDURE BY IMPROPERLY ORDERING PRODUCTION OF DOCUMENTS NOT RELEVANT TO THE SUBJECT MATTER OF THIS LITIGATION THEREBY COMPELLING PRODUCTION OF IN EXCESS OF 3000 FILES INVOLVING OVER ONE MILLION DOCUMENTS.**

**INTERESTED PARTIES**

The Petitioner, CUMIS INSURANCE SOCIETY, INC., (Plaintiff below) is the party ordered to produce documents pursuant to a Request of GOVERNMENT EMPLOYEES CREDIT UNION (Defendant below).

The parties to the District Court action are:

**PLAINTIFF:**

CUMIS Insurance Society, Inc.

The parent and affiliates of Plaintiff are:

CUNA Mutual Insurance Group (Parent Company)  
CUNA Mutual Insurance Society  
CUDIS Insurance Society, Inc.  
CUNA Mutual Investment Corporation  
CMCI Corporation

**DEFENDANTS:**

Government Employees Credit Union  
Chester H. Dorman  
Jerry M. Graybill  
John T. Lancaster  
R. N. Trapnell  
Barbara J. Wood  
J. T. Glass  
Boone E. Kemp  
O. L. Ponder  
H. H. Willms  
Doris Dees Bolton  
James D. Bohn  
E. G. Vorwerk  
Texas Share Guaranty Credit Union

TABLE OF CONTENTS

	<u>Page</u>
QUESTION PRESENTED .....	i
TABLE OF AUTHORITIES .....	iv
OPINIONS BELOW .....	1
JURISDICTION .....	1
STATUTORY PROVISIONS INVOLVED .....	2
STATEMENT OF THE CASE .....	2
Nature of Claims .....	2
Discovery Dispute .....	3
REASONS FOR GRANTING THE WRIT .....	6
CONCLUSION .....	11

## TABLE OF AUTHORITIES

## CASES:

	<u>Page</u>
<i>American Ins. Cos. v. Reed</i> , 626 S.W.2d 898, 902 (Tex. App. — Eastland 1981, no writ) .....	13
<i>Blue Chip Stamps v. Manor Drug Stores</i> , 421 U.S. 723, 741-43, 95 S.Ct. 1917, 1928-29, 44 L.Ed.2d 539 (1975) .....	13
<i>Herbert v. Lando</i> , 441 U.S. 153, 176-7, 99 S.Ct. 1635, 1648-9, 60 L.Ed. 2d 115 (1979) .....	14
<i>Hi-Line Electric Co. v. Travelers Ins. Co.</i> , 587 S.W.2d 488, 490 (Tex. Civ. App. — Dallas 1979, writ ref'd n.r.e.) .....	13
<i>Lone Star Life Ins. Co. v. Griffin</i> , 574 S.W.2d 576, 580 (Tex. Civ. App. — Beaumont 1978, writ ref'd n.r.e.) .....	13
<i>Maryland Amer. Gen. Ins. Co. v. Blackmon</i> , 639 S.W.2d 455, 458 (Tex. 1982) .....	9
<i>Oppenheimer Fund, Inc. v. Sanders</i> , 437 U.S. 340, 351 98 S.Ct. 2380, 2389, 57 L.Ed.2d 253 (1978) .....	6, 7
<i>Russell v. Hartford Cas. Ins. Co.</i> , 548 S.W.2d 737, 742 (Tex. Civ. App. — Austin 1977, writ ref'd n.r.e.) .....	13

## STATUTES:

<i>FED. R. CIV. PRO.</i> 26(b) .....	2, 6, 7, 9
<i>TEX. REV. CIV. STAT. ANN.</i> art 21.21 (1981) .....	7
<i>TEX. REV. CIV. STAT. ANN.</i> art. 21.21-2 (1981) .....	7
<i>TEX. BUS. &amp; COMM. CODE</i> § 17.31 <i>et. seq.</i> (Supp. 1982) .....	7

## PERIODICALS:

Judicial Conference — Second Circuit, 93 F.R.D. 673, 738 (1981) .....	10
Linguist and Flegal, <i>Discovery Abuse — Some New Ideas About an Old Problem</i> , 2 REV. LIT. 1 (1981) ....	10
Sherman and Kinnard, <i>Federal Court Discovery in the 80's — Making the Rules Work</i> , 2 REV. LIT. 10 (1981) 10	10

No. ....

**In The  
Supreme Court of the United States**

---

**OCTOBER TERM, 1982**

---

**CUMIS INSURANCE SOCIETY, INC.,**

*Petitioner*

**v.**

**GOVERNMENT EMPLOYEES CREDIT UNION, ET AL.,**

*Respondents*

---

**PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT OR, ALTERNATIVELY,  
PETITION FOR WRIT OF MANDAMUS**

Petitioner, CUMIS INSURANCE SOCIETY, INC., ("CUMIS") respectfully requests that a Writ of Certiorari issue to review the Order of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on October 1, 1982. Alternatively, CUMIS requests this Court to issue a Writ of Mandamus to the Honorable H. F. Garcia, United States District Judge, Western District of Texas, Austin Division.

**OPINIONS BELOW**

There is no opinion of the District Court. The Orders of the District Court are appended. (A.5 & A.7). There is no Opinion of the Fifth Circuit. The Order of the Fifth Circuit is appended. (A.8).

**JURISDICTION**

The Order of the Court of Appeals was entered on October 1, 1982. Petitioner invokes this Court's jurisdiction under

28 U.S.C. § 1254(1). Alternatively, Petitioner invokes this Court's jurisdiction to issue extraordinary Writs under 28 U.S.C. § 1651(a).

### **STATUTORY PROVISIONS INVOLVED**

*FED. R. CIV. PRO.* 26(b) provides:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. . . .

### **STATEMENT OF THE CASE**

#### **Nature of Claims**

CUMIS, an insurance company, filed a suit seeking a declaratory judgment against GECU, a credit union and CUMIS' insured under an unfaithful performance Bond ("BOND"). CUMIS also seeks declaratory relief against directors and former directors of GECU pursuant to an officers and directors liability policy ("POLICY").<sup>1</sup>

CUMIS generally seeks no affirmative relief other than declaratory relief under both the BOND and the POLICY. Although the relevant facts under the BOND and POLICY are somewhat different, such facts are inter-related. Basically, in regard to the BOND, CUMIS seeks declaratory relief providing that the loss, if any, claimed to have been suffered by GECU allegedly from the acts of one DORIS DEES BOLTON (a former officer and director of GECU and a Defendant herein, hereinafter "BOLTON") is not within the scope of the BOND. CUMIS denies that BOLTON was unfaithful and denies that GECU has suffered a loss as a result of her acts.

<sup>1</sup> Texas Share Guaranty Credit Union is a Defendant because it has entered into a Conservatorship Agreement with GECU.

The declaratory relief sought by CUMIS under the POLICY is more complex. CUMIS has asserted that a majority of the then present directors of GECU (hereinafter "DEFENDANT DIRECTORS") caused GECU, as a corporate entity, to file a claim against themselves, as individuals, for the sole purpose of attempting to reach the POLICY coverage. CUMIS for several reasons (including allegations of non-cooperation by the DEFENDANT DIRECTORS and collusion between GECU and the DEFENDANT DIRECTORS) requests declaratory relief that the POLICY coverage is inapplicable.

After the filing of such suit for declaratory relief, GECU and the DEFENDANT DIRECTORS counterclaimed asserting that CUMIS violated various provisions of the Texas Insurance Code and the Texas Deceptive Trade Practices Act ("DTPA"). The allegations under the Insurance Code and DTPA are based principally on a theory that CUMIS' denial of GECU's and DEFENDANT DIRECTORS' claims under the BOND and POLICY is wrongful and amounts to unfair claims handling.

BOLTON has cross-claimed against GECU and the DEFENDANT DIRECTORS for libel and slander and has asserted her faithfulness.

### **Discovery Dispute**

Soon after the filing of the Complaint, GECU requested that CUMIS produce documents described in a Request for Production of Documents. (A.1). GECU set forth thirty-four (34) separate Categories of documents. CUMIS agreed to produce (and has generally produced) the documents described in Categories 17-26, 28, 32 and 34. CUMIS objected to the documents described in Categories 2-16, 27, 29-31 and 33. (A.2). (No documents were applicable to Category No. 1).



It is difficult to imagine a broader request for production of documents. Generally, GECU's request seeks production of every claim, litigation and underwriting file presently in CUMIS' possession which in any manner "relates to or refers to" the BOND and the POLICY. GECU's request has no time limit. GECU's request indiscriminately seeks production of irrelevant matters, attorney-client communications, trial preparation materials (including mental impressions and the like) and ordinarily confidential insured-insurer communications. GECU's request seeks production of over 3000 files (including pending and terminated litigation files) located in Madison, Wisconsin and Pomona, California. (A.6). GECU's request reaches every underwriting and general corporate file referring to the BOND or POLICY. GECU's request involves hundreds of thousands, if not over one million separate documents. (A.6).

Typical of the requests is Category No. 2 which seeks production of:

All documents which interpret, construe, describe, reflect, *refer to or relate to* insuring Clause "A" of CUMIS' Credit Union's Discovery Bond or any similar provision of any Bond or Policy. (A.1). (Emphasis added.)

Clause "A" is the unfaithful performance insuring clause of the BOND. As can be seen, Category No. 2 (quoted above) requests production of every document which may "refer to or relate to" Clause "A". This request alone would require production of every claim file and litigation file in CUMIS' possession which involves a claim under Clause "A". It further reaches underwriting files and general corporate files involving the issuance of the BOND to thousands of insureds.

Although GECU's requests are divided into many Categories, they may be grouped as follows:

1. Categories 2-8 request production of all documents which "refer to or relate to" various provisions of the BOND.

2. Categories 9-15 request production of all documents which "refer to or relate to" various provisions of the POLICY.

3. Category 16 requests production of all documents which "refer to or relate to" any changes in the provisions referred to in Categories 2-15.

4. Categories 29-31 request production of all documents which "refer to or relate to" any claim under the BOND or POLICY (whether or not in litigation).

5. Categories 27 and 33 generally request production of files containing investigative documents specifically relating to the claim in issue herein. (A.1).

As can be seen, the requests seek production of documents which are totally irrelevant to this proceeding. Production of the requested documents will result in overwhelming burden and expense to CUMIS which will exceed \$100,000.00.

CUMIS asserted various objections (including irrelevance, attorney-client and work product privilege) for refusing to produce the documents described in the objectionable categories. (CUMIS Response A.2). GECU filed its Motion to Compel and asked for a hearing on the Motion. (A.3). CUMIS also requested a hearing.

Without a hearing, without determining what privileged communications were involved, without any inspection of a sampling of documents or otherwise, and without requiring GECU to make the requisite showing of substantial need and unavailability, the District Court for the Western

District of Texas, Austin Division (through the Honorable H. F. Garcia) ordered that no privilege or reason existed to stay discovery and, therefore, that CUMIS must produce all documents requested. (A.5).

CUMIS then filed its Petition for Writ of Mandamus with the Court of Appeals for the Fifth Circuit. The Fifth Circuit Ordered GECU to respond to the Petition. During response time, the District Court, apparently in connection with GECU, amended its Original August 4, 1982, Order (A.5). The Amended Order, dated September 22, 1982, (A.7), attempted to correct the clearly erroneous August 4, 1982, Order by limiting discovery of attorney-client communications and work product. The Amended Order, however, failed to reach the issues of irrelevance of documents and the overwhelming expense to CUMIS.

After the District Court's initial order was amended and after response by GECU, the Fifth Circuit on October 1, 1982, denied CUMIS' Petition for Writ of Mandamus.

### REASONS FOR GRANTING THE WRIT

The District Court's Order compelling production of virtually every claim, litigation and underwriting file of CUMIS involving the BOND or POLICY improperly disregards the Federal Rules of Civil Procedure and permits an appalling abuse of discovery procedures. The scope of discovery is limited to matters which are "relevant to the subject matter involved." Rule 26(b) (1). Although Courts construe this phrase broadly, discovery has "ultimate and necessary boundaries." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351, 98 S.Ct. 2380, 2389, 57 L.Ed.2d 253 (1978). Discovery of matters not "reasonably calculated to lead to the discovery of admissible evidence" is not within the scope

of Rule 26(b) (1). *Oppenheimer*, 437 U.S. at 352. 98 S. Ct. at 2390.

The question specifically raised by this discovery dispute is whether an insured can properly require under Rule 26(b) an insurer to produce virtually every document it possesses which may, in any manner, "relate to or refer to" a particular insurance policy in a suit by the insurer for a declaratory judgment as to the scope of coverage afforded by the policy. If Rule 26(b) provides for such discovery, the obvious result will effectively preclude an insurer's access to the Courts. The incredibly overwhelming cost of such production (including inspection and preparation of such documents prior to production) makes litigation financially impracticable.

The very nature of the insurance business involves dispute resolution and insurers have a practical need for resort to the Courts when policy interpretation questions arise. If in each such lawsuit an insured can compel production of virtually each and every litigation, claim and underwriting file, such use of the Courts is as a practical matter lost.

GECU is expected to argue that the documents requested are relevant because it has alleged that CUMIS violated certain provisions of the Texas Insurance Code (specifically *TEX. REV. CIV. STAT. ANN.* art. 21.21 and *TEX. REV. CIV. STAT. ANN.* art. 21.21-2 (the Unfair Claim Settlement Practices Act)) and the DTPA (*TEX. BUS. & COMM. CODE* §17.41 *et. seq.*). GECU must rely on such causes of action because it is clear that the documents requested have no relevance whatsoever to whether the particular loss alleged by GECU is within the scope of the BOND or POLICY. Documents reflecting some other claim by some other insured under the BOND or POLICY have no

relevance to this claim nor will such documents lead to the discovery of admissible evidence herein.

Thus, the only basis even remotely supportive of GECU's broad request is that documents reflecting other claims and other litigation may somehow be relevant to the causes of action under the DTPA and the Unfair Claim Settlement Practices Act. Those causes of action are essentially based on a theory that CUMIS' denial of the claims under the BOND and POLICY are wrongful or unfair. Thus, GECU's document request is a fishing expedition undertaken with the hopeful expectation to uncover some memo or letter in some other claim file that will support a claim that CUMIS generally treats its insureds unfairly in the handling of claims. There are, however, no pleadings asserting that CUMIS has been unfair to some other claimant.<sup>2</sup>

Reliance upon the DTPA and the Unfair Claim Settlement Practices Act is insufficient to support the Request for Production for at least two reasons. First, the Texas Courts have consistently refused to recognize a private right of action under either the DTPA, the Unfair Claim Settlement Practices Act or any other statute for misconduct of insurers in regard to claim handling.<sup>3</sup> Thus, GECU has not,

<sup>2</sup> In a brief filed in the District Court in support of the Request for Production, however, GECU stated its "counsel" was aware of a pattern of behavior of CUMIS which would support the claim of unfair treatment. Obviously such "awareness" of counsel is insufficient support for production of voluminous documents.

<sup>3</sup> There is no private right of action for unfair claim settlement practices or other post-purchase misconduct of an insurer under any Texas statutory provision including the DTPA and the Unfair Claim Settlement Practices Act. See, *American Ins. Cos. v. Reed*, 626 S.W.2d 898, 902 (Tex. App. — Eastland 1981, no writ); *Hi-Line Electric Co. v. Travelers Ins. Co.*, 587 S.W.2d 488, 490 (Tex. Civ. App. — Dallas 1979, writ ref'd n.r.e.); *Lone Star Life*

(Footnotes continued on following page.)

and can not, properly state a claim upon which relief can be granted based upon unfair claims settlement practices.<sup>4</sup>

Second, and perhaps most importantly, if an insured, who is unhappy that its insurer has denied its insurance claim, can by the mere bare bones pleading of unfair claims handling require the insurer to produce all documents which "refer to" the insurance policy in question, the resulting cost to the insurer will effectively prevent the insurer from litigating such claims.<sup>5</sup> Insurers, which commonly rely on declaratory relief as a manner of resolving policy interpretation disputes will be effectively denied such use of the Courts.

CUMIS would show that the unlimited, expansive document request of GECU is nothing more than a means of

---

*Ins. Co. v. Griffin*, 574 S.W.2d 576, 580 (Tex. Civ. App. — Beaumont 1978, writ ref'd n.r.e.); *Russell v. Hartford Cas. Ins. Co.*, 548 S.W.2d 737, 742 (Tex. Civ. App. — Austin 1977, writ ref'd n.r.e.). Further, there is no common law right of recovery for such misconduct.

The only statutory remedy for unfair claim settlement practices is administrative. To CUMIS' knowledge, GECU has taken no action to initiate such administrative procedures.

- <sup>4</sup> Presently pending is CUMIS' Motion under Rule 12(b)(6) for dismissal of all claims based upon alleged unfair claim settlement practices or other post-purchase misconduct.
- <sup>5</sup> The Texas Supreme Court granted a Petition for Writ of Mandamus in a case similar to this in which an insured alleged its fidelity insurer acted in "bad faith" in handling a fidelity bond claim. The trial court ordered production of documents similar to those in issue here. The Texas Supreme Court refused to permit such discovery abuse and noted:

Moreover, if a plaintiff attempting to prove the validity of a claim against an insurer could obtain the insurer's investigation files merely by alleging the insurer acted in bad faith, all insurance claims would contain such allegations.

*Maryland Amer. Gen. Ins. Co. v. Blackmon*, 639 S.W.2d 455, 453 (Tex. 1982).



extorting settlement payment.<sup>6</sup> The cost to CUMIS of inspecting and preparing the documents in question for production will exceed \$100,000.00. Such expenditure results in no productive discovery in regard to any legally recognizable claim in that the discovery relates solely to the unfair claims handling causes of action. Such expense is wholly unrelated to disposing of the merits of this lawsuit or resolving the questions raised by CUMIS' request for declaratory relief. GECU's discovery request is merely a tactical device intended to impose burdensome costs and thereby coerce payment on a questionable BOND claim.<sup>7</sup>

The scope of discovery must be practically limited. Of great interest to attorneys, commentators and courts these days is the abuse of discovery procedures.<sup>8</sup> The costs of litigation have soared often as a result of unnecessary and irrelevant discovery. This type of discovery abuse should be prohibited.

---

<sup>6</sup> This court has recognized the potential abuse associated with the threat of extensive discovery and the resulting disruption of normal business activities pursuant to groundless claims as representing "an *in terrorem* increment of the settlement value." *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 741-43, 95 S.Ct. 1917, 1928-29, 44 L.Ed.2d 539 (1975).

<sup>7</sup> Dean Paul D. Carrington of Duke Law School noted at the Judicial Conference of the Second Circuit on May 8, 1981, that: "... few can doubt that our [discovery] procedures are now in trouble as a result of overuse of some procedural tools for other than their intended purposes . . . At its best, litigation is expensive but the *tactical imposition* of high costs seems to be a growing habit." (Emphasis added) Judicial Conference — Second Circuit, 93 F.R.D. 673, 738 (1981).

<sup>8</sup> This Court has noted its concern. *Herbert v. Lando*, 441 U.S. 153, 176-7, 99 S.Ct. 1635, 1648-9, 60 L.Ed. 2d 115 (1979). See also, Linquist and Flegal, *Discovery Abuse — Some New Ideas About an Old Problem*, 2 REV. LIT. 1 (1981); Sherman and Kinnard, *Federal Court Discovery in the 80's — Making the Rules Work*, 2 REV. LIT. 10 (1981).

CUMIS would show that the production of documents requested by GECU is a major abuse of discovery procedures and is not within the scope of 26(b) (2). There is no reasonable basis to require an insurer seeking declaratory relief to produce virtually all of the documents it possesses "relating to or referring to" the policy in issue particularly when the volume of such documents is substantial and the purported causes of action under which such discovery is conducted are legally non-recognizable.\*

The District Judge has refused to take an active role in the discovery of this case. The Fifth Circuit declined to participate. Unless this Court provides some relief, CUMIS will be required to incur the overwhelming expense of producing over one million documents in regard to causes of action which fail to state legally recognizable claims. Thus, CUMIS requests this Court to take the appropriate action to prohibit such discovery abuse and to protect CUMIS from the results thereof.

### CONCLUSION

For the reasons stated, a Writ of Certiorari should issue to review the Order of the United States Court of Appeals for the Fifth Circuit denying CUMIS' Petition for Writ of Mandamus.

---

\* CUMIS, for fear of sanctions from the District Court, has produced approximately 50 of the 3000 requested files which involve facts somewhat similar to the facts of this BOND claim. CUMIS was hopeful GECU would decide after such review that further review of the remaining approximately 2950 files would be useless. As indicated in Affidavits filed by GECU with the District Court requesting sanctions against CUMIS, GECU stated that two lawyers and two paralegals spent fourteen hours (each) reviewing the approximately 40 files already produced. The obvious burden to CUMIS of preparing and inspecting the remaining 2950 files for production can be measured against the 56 hours spent by GECU in review of 40 files. Also reflective of the overwhelming burden to CUMIS is the fact that GECU has requested in excess of 6000 photocopies from the approximately 40 files reviewed. At that rate, over 400,000 photocopies will be made if all 2950 are produced.

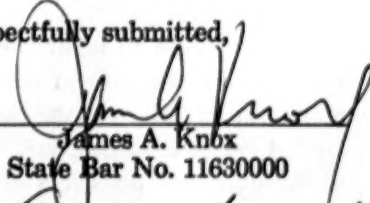


Alternatively, Petitioner requests that a Writ of Mandamus issue from this Court directed to the Honorable United States District Court for the Western District of Texas, Austin Division and to the Honorable H. F. Garcia, requiring that said Honorable H. F. Garcia show cause on a day to be fixed by this Court why mandamus should not issue to vacate the Order dated September 22, 1982, of such District Court requiring production of documents as described herein.

Petitioner further requests such additional relief as may be necessary and proper.

Respectfully submitted,

By:

  
James A. Knox  
State Bar No. 11630000

By:

  
Stephen L. Baskind  
State Bar No. 1875600

VIAL, HAMILTON, KOCH, TUBB,  
KNOX, & STRADLEY  
1500 RepublicBank Tower  
Dallas, Texas 75201  
(214) 748-4541

and

JOHN C. WILSON  
WILSON & GROSENHEIDER  
711 West Seventh Street  
Post Office Box 1584  
Austin, Texas 78767  
(512) 478-1657

*Counsel for Petitioner*

**CERTIFICATE OF SERVICE**

**THIS WILL CERTIFY** that on the ..... day of ....., 1982, three copies of the Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit Or, Alternatively, Petition For Writ Of Mandamus were mailed, postage prepaid to the following:

Mr. Everette G. Allen, Jr.  
 Ms. Linda Royster  
 Mr. Charles F. Witthoefft  
 Hirschler, Fleischer, Weinberg,  
 Cox & Allen  
 Post Office Box IQ  
 629 East Main Street  
 Richmond, Virginia 23202

Mr. Thomas Watkins  
 Hilgers, Watkins & Kazen, P.C.  
 Post Office Box 2063  
 City National Bank Bldg.  
 Austin, Texas 78768

Mr. John Coates  
 Clark, Thomas, Winters  
 & Shapiro  
 1200 Capital National  
 Bank Bldg.  
 Post Office Box 1148  
 Austin, Texas 78767

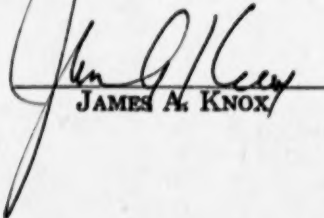
Mr. Jerry Nugent  
 Rinehart & Nugent  
 1040 American  
 Bank Tower  
 221 West Sixth Street  
 Austin, Texas 78701

Mr. Lloyd Lockridge  
 Mr. James R. Raup  
 McGinnis, Lockridge,  
 Kilgore  
 Texas State Bank Building  
 900 Congress Avenue  
 Fifth Floor  
 Austin, Texas 78701

Mr. Robert C. Howell  
 711 West Seventh Street  
 Austin, Texas 78701

The Honorable  
 H. F. Garcia  
 655 East Durango Blvd.  
 San Antonio, Texas 78206

**I further certify that all parties required to be served have been served.**

  
 JAMES A. KNOX